

Defendants.

[illegible]

## COMPLAINT AND DEMAND FOR JURY TRIAL

## JURISDICTION

1. This action arises out of Defendants’ repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. (“TCPA”).
2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.
3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that the Plaintiff in this District and a substantial portion of the acts giving rise to this action occurred in this District.

## PARTIES

4. The Plaintiff, Sarah Butts (“Plaintiff”), is an adult individual residing in Greenville, South Carolina, and is a “person” as the term is defined by 47 U.S.C. § 153(39).
5. Defendant American InterContinental University (“American”), is an Illinois business entity with an address of 231 North Martingale Road, Schaumburg, Illinois 60173, and is a “person” as the term is defined by 47 U.S.C. § 153(39).

6. Does 1-10 (the “Agents”) are individual agents employed by American and whose identities are currently unknown to Plaintiff. One or more of the Agents may be joined as parties once their identities are disclosed through discovery.

7. American at all times acted by and through one or more of the Agents.

### **FACTS**

8. Within the last year, American contacted Plaintiff’s cellular telephone, number [864-593-XXX].

9. During all times mentioned herein, American called Plaintiff by using an automated telephone dialing system (“ATDS” or “predictive dialer”).

10. Plaintiff has no prior business relationship with American did not provide her express consent to American to be contacted by means of an automated system.

11. When Plaintiff answered the calls from American, she was met with a period of silence before being connected to a live representative.

12. In or around September 2014, during a live conversation with American, Plaintiff requested that all calls to her cellular telephone cease.

13. Despite this request, American continued to place over twenty ATDS calls to Plaintiff’s cell phone.

### **COUNT I**

#### **VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT – 47 U.S.C. § 227, et seq.**

14. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

15. At all times mentioned herein and within the last year, Defendant called Plaintiff on her cellular telephones using an ATDS or predictive dialer and/or by using a prerecorded or artificial voice.

16. In expanding on the prohibitions of the TCPA, the Federal Communications Commission (FCC) defines a Predictive Dialer as “a dialing system that automatically dials consumers’ telephone numbers in a manner that “predicts” the time when a consumer will answer the phone and a [representative] will be available to take the call...”*2003 TCPA Order*, 18 FCC 36 Rcd 14022. The FCC explains that if a representative is not “free to take a call that has been placed by a predictive dialer, the consumer answers the phone only to hear ‘dead air’ or a dial tone, causing frustration.” *Id.* In addition, the TCPA places prohibitions on companies that “abandon” calls by setting “the predictive dialers to ring for a very short period of time before disconnecting the call; in such cases, the predictive dialer does not record the call as having been abandoned.” *Id.*

17. Defendant’s telephone systems have some earmarks of a Predictive Dialer.

18. Often times when Plaintiff answered the phone, she was met with a period of silence before Defendant’s telephone system would connect her to the next available representative.

19. Upon information and belief, Defendant’s Predictive Dialers have the capacity to store or produce telephone numbers to be called, using a random or sequential number generator.

20. Defendant contacted Plaintiff by means of automatic telephone calls to his cellular phone knowing that it lacked consent to call his number in light of him revoking his consent. As such, each call placed to Plaintiff was made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

21. The telephone number called by Defendant was assigned to a cellular telephone service for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

22. The calls from Defendant to Plaintiff were not placed for “emergency purposes” as defined by 47 U.S.C. § 227(b)(1)(A)(i).

23. As a result of each call made in negligent violation of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

24. As a result of each call made in knowing and/or willful violation of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

**PRAYER FOR RELIEF**

**WHEREFORE**, the Plaintiff prays that judgment be entered against the Defendants:

1. Statutory damages of \$500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(3)(B);
2. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C); and
3. Such other and further relief as may be just and proper.

**TRIAL BY JURY DEMANDED ON ALL COUNTS**

Dated: November 21, 2014

Respectfully submitted,

By



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